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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,507	11/14/2003	Robert P. Breazeale JR.	S-830	9944

50779 7590 05/10/2005

WORLD FACTORY, INC.  
c/o LAW OFFICES OF JAMES E. WALTON, P.L.L.C.  
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BURLESON, TX 76028

EXAMINER

PAYER, HWEI SIU CHOU

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/713,507

Applicant(s)

BREAZEALE, ROBERT P.

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10,12-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,10,12-14 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## Detailed Action

The amendment filed on 3-14-2005 has been entered.

### Claims Rejection - 35 U.S.C. 102(b)

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Evich (U.S. Patent No. 2,984,005).

It is noted the claimed invention has been interpreted as being directed to a guard only. The reciprocating saw as cited therein is not part of the claimed combination.

Evich discloses a flexible rubber guard (65) which is fully capable of being detachably attached to a housing of a battery powered reciprocating saw if such saw is so provided.

### Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evich (U.S. Patent No. 2,984,005).

Evich shows the claimed flexible guard (65) except it is not made of "ethylene propylene diene monomer".

To select a well known flexible material such as ethylene propylene diene monomer for Evich's flexible guard (65) would have been obvious to one having ordinary skill in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

3. Claims 5-7, 9, 10, 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (U.S. Patent No. 3,203,095) in view of Evich (U.S. Patent No. 2,984,005), Bridgers (U.S. Design Patent No. 373,712) and Cousins et al. (U.S. Patent No. 3,417,469).

Nelson shows the claimed invention except it lacks a flexible guard for inhibiting entry of liquid or foreign matter into the housing (10).

Evich shows a cutting device comprising a flexible rubber guard (65) enclosing a forward end of a knife housing.

It would have been obvious to one skilled in the art to modify Nelson by enclosing the forward end of the knife housing (10) with a flexible rubber guard to

prevent foreign matter or fluids from entering the interior of the knife housing as taught by Evich.

Nelson as modified above does not show the guard being removable from the knife housing.

Bridgers teaches that it is desirable to have a guard that is detachable from a cutting device in order to facilitate cleaning of the guard or to have it used with another compatible cutting device as desired.

In view of this teaching, it would have been obvious to one skilled in the art to further modify Nelson by having the flexible rubber guard configured for detachable attachment to a reciprocating saw to make the guard more feasible.

With respect to claim 7, to select a well known flexible material such as ethylene propylene diene monomer for Nelson's guard would have been obvious to one having ordinary skill in the art, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claims 9, 12 and 16, although Nelson does not specifically mention the use of a battery as power source, it does show the reciprocating saw being "cordless". Therefore, it is inherent a self-contained power source such as a battery is provided therein or it would have been obvious to one skilled in the art to use batteries as power source in a reciprocating saw as taught by Cousins et al. (see column 4, lines 39-41) for the advantage of self contained.

## Remarks

Applicant's arguments with respect to claims 1-7, 9, 10, 12-14 and 16 have been considered but are moot in view of the new ground(s) of rejection.

## Action Made Final

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

## Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-

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4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 571-273-4511 for proposed amendments.

H Payer  
May 2, 2005

*Hwai-Siu Payer*

**Hwai-Siu Payer**  
**Primary Examiner**